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§ 4.271 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified to include such omitted property for distribution pursuant to the original decision. Such modification may be made either administratively by the Commissioner or by a modification order prepared by him or her for the approval and signature of the OHA deciding official. Copies of such modifications must be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner must notify the OHA deciding official who will proceed to hold a hearing if necessary and will issue a decision under § 4.240. The record of any such proceeding must be lodged with the title plant designated under § 4.236(b).

§ 4.272 Improperly included property.

(a) When, subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The OHA deciding official will review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the OHA deciding official must give notice of his or her action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the OHA deciding official may conduct a hearing at any stage of the modification proceeding. Any such hearing must be scheduled and conducted in accordance with the rules of this subpart. The OHA deciding official will enter a final decision based on his or her findings, modifying or refusing to modify the prop-

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erty inventory, and his or her decision will become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision must be given in accordance with § 4.240(b).

(d) A party aggrieved by the OHA deciding official's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings must be lodged with the title plant designated under § 4.236(b).

§ 4.273 Distribution of estates.

(a) Seventy-five days after a final order has been issued, unless the Superintendent has received a copy of a petition for rehearing filed pursuant to the requirements of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.320(b), he or she must initiate payment of allowed claims, distribution of the estate, and all other actions required by the OHA deciding official's final order.

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under § 4.241 or § 4.242, unless the OHA deciding official orders otherwise in writing. The Board may, at any time, authorize the OHA deciding official to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

MISCELLANEOUS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the OHA deciding official. At the discretion of the OHA deciding official, such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees must be filed prior to the close of the last hearing and must be supported by such proof as is required by the OHA deciding official. In determining attorney

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fees, consideration must be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the OHA deciding official.

TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.300 Authority and scope.

(a) The rules and procedures set forth in §§ 4.300 through 4.308 apply only to proceedings in Indian probate which relate to the tribal purchase of a decedent's interests in trust and restricted land as provided by:

(1) The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968), with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951);

(2) The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530), with respect to trust or restricted land within the Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37); and

(3) The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744), with respect to trust or restricted land within the Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).

(b)(1) In the exercise of probate authority, an OHA deciding official will determine:

(i) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(ii) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests which have been purchased by a tribe; and

(iii) The fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(2) In the determination under paragraph (b)(1) of this section of the entitlement of a tribe to purchase the interests of an heir or devisee, the issues of

(i) Enrollment or refusal of the tribe to enroll a specific individual and

(ii) Specification of blood quantum, where pertinent, will be determined by the official tribal roll which is binding upon the OHA deciding official. For good cause shown, the OHA deciding official may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 4.301 Valuation report.

(a) In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, the BIA must furnish a valuation of the decedent's interests when the record reveals to the Superintendent:

(1) That the decedent owned interests in land located on one or more of those reservations designated in § 4.300 and

(2) That any one or more of the probable heirs or devisees, who may become a distributee of such interests upon completion of the probate proceeding, is not enrolled in or does not have the required blood quantum in the tribe of the reservation where the land is located to hold such interests against a claim thereto made by the tribe. If there is a surviving spouse whose interests may be subject to the tribal option, the valuation must include the value of a life estate based on the life of the surviving spouse in one half of such interests. The valuation must be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.